

REMARKS/ARGUMENTS

Art Rejections

Claims 1-84 were examined on their merits. Claim 1, 21, 23, 25, 43, 63, 65, and 67 have been amended to further specify the location of the inlet with respect to the housing and outlet. Therefore, claims 1-84 are currently pending in the present application.

1. Claims 1-19, 21-42, 43-61, 63-84 stand rejected under 35 U.S.C. § 103(a) as being unpatentable by Voges, U.S. Patent No. 5,894,891 ("Voges") and Stevens, U.S. Patent No. 1,105,934 ("Stevens"). These rejections are respectfully traversed for at least the following reasons. Claims 1, 21, 23, 25, 43, 63, 65, and 67 are all independent claims. Claims 2-19 ultimately depend from independent claim 1. Claim 22 depends from claim 21. Claim 24 depends from independent claims 23. Claims 26-42 ultimately depend from independent claim 25. Claims 44-62 ultimately depend from independent claim 43. Claims 64 depends from independent claim 63. Claims 66 depends from independent claim 65. Claims 68-84 ultimately depend from independent claim 67. Applicant respectfully traverses this rejection for at least the reasons stated below.

Independent Claims 1, 21, 23, 25, 43, 63, 65, and 67

Independent claims 1, 21, 23, 25, 43, 63, 65, and 67 recite the variation of the following limitation:

"a housing having an upstream end and downstream end of said housing comprising an inlet and an outlet between which is formed an airflow path wherein the inlet is located at said upstream end of said housing and facing opposite to said outlet directly upstream of the reservoir and in which at least the ejection head is disposed in the air flow path downstream of the inlet and upstream from the outlet, wherein the housing provides for a substantially unobstructed airflow between the ejection head and the outlet when air traverses the airflow path from the inlet to the outlet."

As to independent claims 1, 21, 23, 25, 43, 63, 65, and 67, Voges ('841) discloses a device (fig.2) that comprises a series of inlet (7) that are laterally position with respect to the reservoir (10) which differs in both the manner of airflow intake (i.e., how the intake air flows from the sides and not from the rear) and the location of the inlet with respect to the reservoir (10). Absent from Voges is any disclosure, teaching or suggestion of a housing where the "inlet is located at said upstream end of said housing and facing opposite to said outlet." Specifically, Voges teaches that "the housing part 3 is closed or constricted at the end 9 remote from the mouthpiece 5." Voges avoids offering such alterations or alternative to add an opening near or at the end 9 remote from the mouthpiece 5.

Modifying the housing of Voges to include an inlet (passage 3) as taught by Stevens where the "inlet is located at said upstream end of said housing and facing opposite to said outlet" would contradict Voges requirement that the end 9 remote from the mouthpiece (outlet) is closed [emphasis added]. Consequently, combining Voges with Stevens fails to produce the claimed subject matter. Moreover, Examiner admits that "the combination of Voges and Stevens does not teach that the inlets must be located in wall (9) of Voges" where wall (9) is located at the upstream end and facing opposite to the outlet. The Examiner is therefore respectfully requested to withdraw the § 103(a) rejection from amended independent claims and from the claims that depend therefrom.

2. Claim 20 and 62 stands rejected under 35 U.S.C. § 103(a) as being obvious and unpatentable over Voges in view of , U.S. Patent No. 1,105,934 ("Stevens") and Gonzalez, U.S. Patent No. 455,614 ("Gonzalez"). Claim 20 depends from independent claim 1 and Claim 62

depends from independent claim 43 which Applicant has shown to be patentable over Voges in view of Stevens for at least the reasons stated above which are fully incorporated herein.

Because Voges is deficient with respect to claims 20 and 62 for at least the reasons stated above, the Examiner must rely on Stevens and Gonzalez to compensate for the foregoing deficiencies of Voges.

Gonzalez is directed to a smoking device for delivering an aerosolized compound. More specifically, Gonzalez describes a smoking device that contains an inlet (a), reservoir (a') located beneath the inlet, a smoke passage (A'), and a sponge (B) acting as a filter that separates the inlet (a) and mouthpiece (c'). Absent from Gonzalez, however, is any disclosure, teaching or suggestion for a housing comprising an inlet and an outlet between which is formed an airflow path wherein the inlet is directly upstream of the reservoir and in which at least the ejection head is disposed in the air flow path downstream of the inlet and upstream from the outlet, wherein the housing provides for a substantially unobstructed airflow between the ejection head and the outlet when air traverses the airflow path from the inlet to the outlet as recited in independent claims 1, 21, 23, 25, 43, 63, 65, and 67.

Because there can be found in Gonzalez no teaching or suggestion that meets the above-identified limitations, the combination of Voges, Stevens and Gonzalez cannot reasonably be said to render obvious the claimed subject matter. The Examiner is therefore respectfully requested to withdraw the § 103(a) rejection from claims 20 and 62.

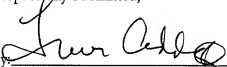
CONCLUSION

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

After the above Amendments, claims 1-84 are still pending in the application, of which claims 1, 21, 23, 25, 43, 63, 65, and 67 are independent claims. Thus, there are 84 total claims and 8 independent claims.

No fee is believed to be due with this submission but the Commissioner is hereby authorized to charge any additional fees which may be required, but not to include the payment of any issue fee, to Deposit Account No. 50-2613. (Order Number 38466.00008.UTL1.P1068).

Respectfully Submitted,

By 

Trevor Q. Coddington, Ph.D., Esq.
Reg. No. 46,633

Dated: December 19, 2006

CUSTOMER NO. 36183
PAUL, HASTINGS, JANOFSKY & WALKER LLP
P.O. Box 919092
San Diego, CA 92191-9092
PH: (858) 720-2500
FX: (858) 720-2555